

MAY 09 2005

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

2005 MAY -9 P 3: 33

FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR: 5605

DATE COMPLAINT FILED: November 3, 2004

DATE OF NOTIFICATION: November 10, 2004

DATE ACTIVATED: February 09, 2005

EXPIRATION OF SOL: October 23, 2006

COMPLAINANT:

Timothy Edward Rusk, Esq.

RESPONDENT:

InfoCision Management Corp.

RELEVANT STATUTES:

2 U.S.C. § 431(22)

2 U.S.C. § 431(24)

2 U.S.C. § 441d(a)

2 U.S.C. § 441h(b)

11 C.F.R. § 100.26

11 C.F.R. § 100.28

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

25004114336

I. INTRODUCTION

This matter concerns fundraising calls InfoCision Management Corporation (“InfoCision”), a telemarketing firm, made on behalf of the National Republican Congressional Committee (“NRCC”).<sup>1</sup> According to the complaint, in 2001, attorney Timothy E. Rusk received a number of calls from individuals identifying themselves as aides from the offices of Congressman Tom Davis and “Congressman Hoffman”<sup>2</sup>, inviting Rusk to become “honorary chairman of a new business advisory council.” Complaint. During one of the communications, the caller solicited a monetary contribution for the NRCC. Upon inquiry into the nature of the call, the Complainant spoke to a supervisor and learned that InfoCision was the actual source of the call. The Complainant alleges that it was “fraudulent” for the telemarketing callers to identify themselves as Congressional aides when they were actually telemarketers.

As further discussed below, based on a review of the matter we recommend that the Commission find no reason to believe that InfoCision violated the Act based on the facts set forth above.

---

<sup>1</sup> InfoCision, founded in 1982, is a telemarketing service based in Akron, Ohio. Chris Cillizza, *Calls Fuel NRCC*, ROLL CALL, Apr. 2, 2003; Jim VandeHei and Juliet Eilpern, *For GOP, A High-Priced Pitch; Firm Gets \$16 Million Over Four Months for Fundraising Work*, Washington Post, Jun. 16, 2003, at A04. On its website, the company describes itself as “the world’s eighth largest outbound call center organization . . . [and] a top-50 provider of inbound and outbound teleservices for nonprofit, religious, political and commercial organizations” “that operates call centers at 10 locations in Ohio, Pennsylvania and West Virginia.” <http://www.infocision.com>. Commission records indicate the NRCC has been paying InfoCision for phone banks for several years.

<sup>2</sup> Although the Complaint refers to a “Congressman Hoffman”, we have been unable to locate any Republican Congressman by that name during the relevant timeframe.

1 **II. FACTUAL AND LEGAL ANALYSIS**<sup>3</sup>

2  
3 InfoCision's telephone calls made on behalf of the NRCC did not constitute a fraudulent  
4 misrepresentation of campaign authority in violation of 2 U.S.C. § 441h. Prior to the enactment  
5 of BCRA, 2 U.S.C. § 441h provided that "[n]o person who is candidate for Federal office or an  
6 employee or agent of such a candidate shall – (1) fraudulently misrepresent himself or any  
7 committee or organization under his control as speaking or writing or otherwise acting for or on  
8 behalf of any other candidate or political party or employee or agent thereof on a matter which is  
9 damaging to such other candidate or political party or employee or agent thereof." Information in  
10 the public record, as well InfoCision's response to the Complaint, all appear to indicate that the  
11 telemarketing calls were made with the consent of Republican Representatives from Congress,  
12 including the consent of Congressman Tom Davis, who was chairman of the NRCC in 2001.  
13 Further, even if the calls were made without the knowledge of the Congressmen, any  
14 misrepresentation that may have occurred was not made in a manner that was damaging to any  
15 Republican Congressman to constitute a violation of section 441h.

16 Read broadly, the complaint could also be construed as asserting that InfoCision violated  
17 2 U.S.C. § 441d(a) by failing to include a disclaimer on at least one of the calls indicating that it  
18 was made on behalf of the NRCC.

19 However, InfoCision could not have violated  
20 2 U.S.C. § 441d in this matter for two reasons. First, InfoCision was merely the vendor; were  
21 any disclaimer requirement applicable it would be the NRCC as the sponsor of the

---

<sup>3</sup> The events that are the subject of this report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless noted to the contrary, all references to statutes and regulations referenced in this report pertain to those that were in effect prior to the implementation of BCRA.

1 communication, and not InfoCision, that would be held liable for any violation. Second, the calls  
2 at issue occurred in 2001. Prior to November 6, 2002, it was unclear whether 2 U.S.C. § 441d  
3 required disclaimers on telemarketing calls, whether containing solicitations or express advocacy,  
4 placed on behalf of political committees. Thus, the Commission consistently did not require  
5 disclaimers for such communications. However, BCRA and the regulations thereunder removed  
6 any ambiguity by specifying that public communications through telephone banks were included  
7 in the types of "general public political advertising" subject to the disclaimer requirement. *See*  
8 2 U.S.C. §§ 441d(a), 431(22), 431(24); 11 C.F.R. §§ 110.11, 100.26; *see also* Explanation and  
9 Justification, *Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of*  
10 *Campaign Funds*, 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) (explaining that "each form of  
11 communication specifically listed in the definition of 'public communication,' as well as each  
12 form of communication listed with reference to a 'communication' in 2 U.S.C. § 441d(a), must  
13 be a form of 'general public political advertising'").

14 Because the telephone calls that InfoCision made to the complainant were made prior to  
15 the effective date of BCRA and because they were presumably made with the consent of  
16 Congressman Tom Davis through the NRCC, we recommend the Commission find no reason to  
17 believe that InfoCision Management Corporation violated 2 U.S.C. §§ 441d and 441h.

18

19

20

21

22

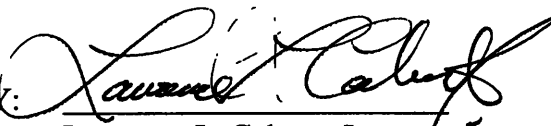
25044114339

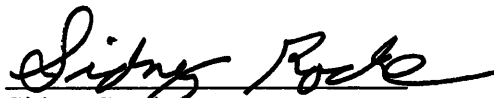
IV. RECOMMENDATIONS

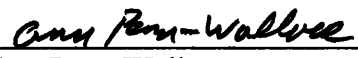
1. Find no reason to believe that InfoCision Management Corporation violated 2 U.S.C. §§ 441d and 441h.
2. Approve the appropriate letters.
3. Close the file.

Lawrence H. Norton  
General Counsel

5/9/05  
Date

BY:   
Lawrence L. Calvert, Jr.  
Deputy Associate General Counsel  
for Enforcement

  
Sidney Roake  
Assistant General Counsel

  
Ana Peña-Wallace  
Attorney *by spz*

2504411A340